

IN THE COURT OF COMMON PLEAS  
PIKE COUNTY

STATE OF OHIO, ex rel.  
BETTY MONTGOMERY,  
ATTORNEY GENERAL OF OHIO  
30 East Broad Street  
Columbus, Ohio 43215,

Plaintiff,

v.

W.D. MILLER ENTERPRISES, L.L.C.,  
formerly known as Miller Lumber  
Company,  
P.O. Box 160  
1617 Laparrell Road  
Lathem, Ohio 45649  
c/o statutory agent,

and

DOUG MILLER,  
In his personal capacity and doing  
business as W.D. Miller Enterprises L.L.C.,  
P.O. Box 160  
1617 Laparrell Road  
Lathem, Ohio 45649,

Defendants.

CASE NO. 493-CIV-01

JUDGE

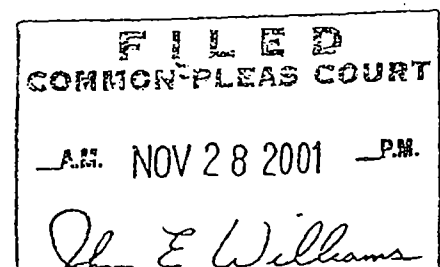
CONSENT ORDER  
FOR PRELIMINARY  
INJUNCTION

US EPA RECORDS CENTER REGION 5



416436

The Complaint in the above-captioned matter having been filed herein, and the Plaintiff State of Ohio, by its Attorney General Betty D. Montgomery (hereinafter "Plaintiff") and Defendant W.D. Miller Enterprises L.L.C. and Defendant Doug Miller, both in his personal capacity and doing business as W.D. Miller Enterprises, L.L.C. (collectively, "Defendants") having consented to the entry of this Consent Order and Preliminary Injunction ("COPF").



NOW, THEREFORE, without trial, admission, or determination of any issue of fact or law, and upon the consent of the parties hereto, it is hereby ORDERED, ADJUDGED, and DECREED as follows:

**I. DEFINITIONS**

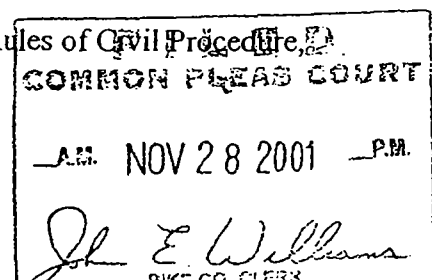
1. As used in this Order, the following terms are defined as follows:
  - a. "Air contaminant source" or "Source" have the same meanings as set forth in R.C. 3704.01(C) and O.A.C. 3745-31-01(D) and 3745-35-01(B)(1).
  - b. "Facility" means Defendants' solid waste recycling facility located 1617 Laparrell Road, Lathem, Pike County, Ohio.
  - c. "Ohio EPA" means the Ohio Environmental Protection Agency, the Director of the Ohio Environmental Protection Agency and the agencies delegated authority by the Director pursuant to R.C. 3704.03 or the chief of any Ohio Environmental Protection Agency district office.
  - d. "Permit to Install" or "PTI" has the same meaning as set forth in O.A.C. Chapter 3745-31.
  - e. "Permit to Operate", or "PTO", has the same meaning as set forth in O.A.C. Chapter 3745-35.

**II. JURISDICTION AND VENUE**

2. The Court has jurisdiction over the parties and the subject matter of this case. The Complaint states a claim for which relief can be granted against the Defendants pursuant to R.C. Chapters 3704, 3734, and 6111. Venue is proper in this Court.

**III. PERSONS BOUND**

3. The provisions of this COPI shall apply to and be binding upon the parties to this action, and, in accordance with Rule 65(D) of the Ohio Rules of Civil Procedure,



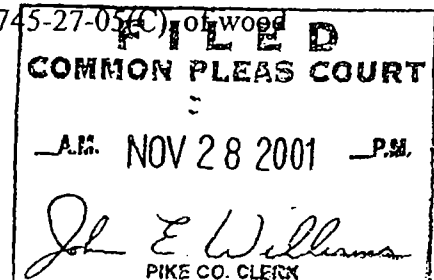
their officers, agents, servants, employees, attorneys, successors, and assigns, and other persons in active concert or participation with them who receive actual notice of this COPI whether by personal service or otherwise.

#### IV. PRELIMINARY INJUNCTIVE RELIEF

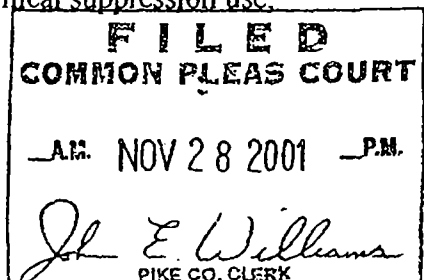
4. Immediately upon entry of this COPI, Defendants agree and are enjoined and ordered to comply with R.C. Chapters 3704, 3734, and 6111 and the regulations adopted thereunder; all terms and conditions of PTI 06-4142; and the requirements of the Director's Final Findings and Orders issued September 19, 1994, pursuant to the authority vested in the Director of Ohio EPA under Chapters 3704, 3734, 3745, and 6111.

5. Immediately upon entry of this COPI, Defendants agree and are enjoined and ordered to comply with all of the following requirements:

- a. Immediately hire a professional, registered surveyor to conduct an initial survey, and subsequent surveys every three months following the filing date of this COPI, of all storage piles at the Facility that consist of wood material, which material includes but is not limited to the following: saw dust, waste particle board, baghouse dust, and other wood products (hereinafter, collectively "wood material"). Such surveys shall include both topography and total volume of the solid waste materials and a copy of each such survey shall be submitted by the fifteenth day of the month following every three month period;
- b. Immediately reduce, by one fifth (1/5) every three (3) months from the filing date of this COPI, unless a reasonable alternative amount is otherwise agreed upon between the parties in writing, all existing wood material from any storage pile that exceeds thirty (30) feet in height and two and one half (2.5) acres in basil area, according to the results of the initial survey provided under paragraph (a) above, until such time, but in no event later than January 15, 2003, as all storage piles at the Facility remain below 30 feet high and no more than 2.5 acres in basil area;
- c. Immediately cease open dumping, as that term is defined at R.C. Chapter 3734 and Ohio Adm. Code Rule 3745-27-05(C) of wood material;



- d. Immediately cease adding incoming wood material to any storage pile that exceeds 30 feet high and 2.5 acres in basil area;
- e. Immediately process and lawfully remove all incoming wood material to a licensed solid waste disposal or transfer facility, a properly authorized location for land application or beneficial use, a resource recovery facility or other location authorized to accept such material within no more than three (3) days from the date of receipt of the wood material unless otherwise agreed to in writing between the parties;
- f. Immediately begin submitting monthly reports to Ohio EPA's South East District Office that include total tons of solid waste material received for the month, total tons of solid waste material shipped for the month and total draw down of solid waste material for the month. Such reports shall be due by the fifteenth day of the following month;
- g. Immediately upon compliance with the terms of this COPI but in no event later than January 15, 2003, install permanent horizontal and vertical control markers to delineate the permitted storage limits along all storage pile perimeters at a frequency not to exceed 200 feet;
- h. Immediately install, operate and maintain at all times, any necessary emission control equipment at the tub grinder including, but not limited to, enclosures and a water spray bar or such other water or chemical suppression system that prevents the release of any fugitive dust emissions from the source;
- i. Immediately install, operate and maintain at all times a water or chemical suppression system at the sawdust/woodchip storage, loading and unloading pile that prevents the release of fugitive dust emissions from the source;
- j. Immediately install, operate and maintain at all times a water or chemical suppression system at unpaved roadways and parking areas that prevents the release of any fugitive dust emissions from the source except for a period of time not to exceed three minutes during any sixty minute observation period;
- k. Immediately install a flow monitor to measure use of public water for fugitive dust emissions suppression and begin submitting monthly records of daily water and/or chemical suppression use, and watering truck operation;

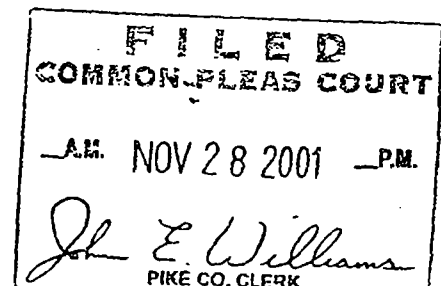


- l. Immediately cease expanding the area covered by wood material;
- m. Immediately cease discharging overflow from the sediment pond into nearby state waterways;
- n. Immediately restore and maintain a containment and collection ditch around the storage pile;
- o. Within no more than thirty (30) days from the filing date of this COPI, restore and maintain a pond liner and dredge the collection pond to achieve compliance with appropriate containment volume according to applicable permits;
- p. Immediately remove secondary leachate discharge resulting from roadway debris;
- q. Immediately remediate areas previously occupied by unpermitted storage piles by removing residual debris and restoring a dense vegetative cover; and
- r. Immediately allow access to the Facility by representatives of Ohio EPA and the Pike County Public Health Department in order for such persons to conduct periodic inspections necessary to confirm on-going compliance with the provisions of this COPI and all enforceable permits.

V. STIPULATED PENALTIES

6. In the event that Defendants fail to comply with any of the requirements imposed by this COPI, Defendants shall immediately be liable for and shall pay a stipulated penalty according to the following payment schedule.

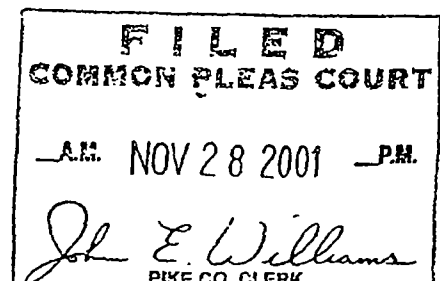
- a. for each day of failure to meet a requirement, up to thirty (30) days, two hundred and fifty dollars (\$250.00) per day for each requirement not met.



- b. for each day of failure to meet a requirement, from thirty-one (31) to sixty (60) days, five hundred dollars (\$500.00) per day for each requirement not met.
- c. for each day of failure to meet a requirement, from sixty-one (61) to ninety (90) days, seven hundred and fifty dollars (\$750.00) per day for each requirement not met.
- d. for each day of failure to meet a requirement, over ninety (90) days, one thousand dollars (\$1,000.00) per day for each requirement not met.

7. In the event Defendants fail to meet any of the requirements of this COPI, the Defendants shall immediately be liable for payment of stipulated penalties imposed by this Order without prior demand by the State of Ohio. The imposition, payment and collection of stipulated penalties pursuant to violations of this COPI shall not prevent the State from pursuing additional remedies, civil, criminal or administrative, for violations of applicable laws.

8. Any such stipulated penalty shall be paid by delivering to Jena Suhadolnik or her successor, Administrative Assistant, Attorney General's Office, Environmental Enforcement Section, 30 East Broad Street, 25th Floor, Columbus, Ohio 43215-3428, a certified check for the appropriate amount immediately upon the date of the violation, made payable to the order of "Treasurer, State of Ohio."



## **VI. RESERVATION OF RIGHTS**

9. The State of Ohio reserves the right to seek further relief from this Court or any other court, including, but not limited to, further preliminary and/or permanent injunctive relief, civil penalties and cost recovery for work beyond this COPI.

10. Except as provided herein, this COPI shall not be construed to limit the authority of the State of Ohio to seek civil penalties for violations alleged in the Complaint, nor shall this COPI bar any civil or criminal claims, demands, rights, causes of action (judicial or administrative) which the State of Ohio may have or which may in the future accrue against Defendants or others, regardless of whether such claim, demand, right or cause of action was asserted in the Complaint.

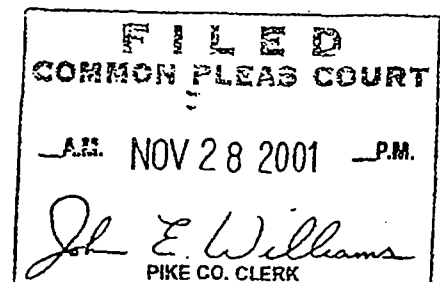
11. Nothing herein shall limit the authority of the State of Ohio to undertake any action against any entity, including Defendants to eliminate or control conditions which may present a threat to the public health, safety, welfare or environment, and to seek cost reimbursement for any such action.

12. Nothing herein shall be construed to relieve Defendants of their obligation to comply with applicable federal, state or local statutes, regulations or ordinances, including but not limited to permit requirements.

13. Defendants reserve all rights that they may have against any other person under all federal, state and local laws, except as may be set forth in a separate agreement or agreements.

## **VII. RETENTION OF JURISDICTION**

14. The court will retain jurisdiction of this action for the purpose of enforcing this COPI.



**VIII. COSTS**

15. Defendants are hereby ordered to pay the court costs of this action.

**IX. ENTRY OF CONSENT ORDER AND PRELIMINARY INJUNCTION**

16. Upon signing of this COPI by the Court, the clerk is directed to enter it upon the journal. Within three (3) days of entering the judgment upon the journal, the clerk is directed to serve upon all parties notice of the judgment and its date of entry upon the journal in the manner prescribed by Rule 5(B) of the Ohio Rules of Civil Procedure and note the service in the appearance docket.

**IT IS SO ORDERED**

\_\_\_\_\_  
DATE

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CASSANDRA S. BOLT-MEREDITH  
JUDGE, PIKE COUNTY  
COURT OF COMMON PLEAS

Respectfully submitted and approved:

BY:

\_\_\_\_\_  
*Doug Miller*  
Doug Miller, President  
W.D. Miller Enterprises LLC

**BETTY D. MONTGOMERY  
ATTORNEY GENERAL OF OHIO**

BY:

\_\_\_\_\_  
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*Attorney for Defendants*

BY:

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